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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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WILLIAM A. MUNDELL

Arizona Corporation Commission

CHAIRMAN

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JIM IRVIN

MAY 31 2002

COMMISSIONER

MARC SPITZER

COMMISSIONER

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY FOR
APPROVAL OF NEW PARTIAL REQUIRE-
MENTS SERVICE TARIFFS; MODIFICATION OF
EXISTING PARTIAL REQUIREMENTS
SERVICE TARIFF 101; AND ELIMINATION OF
QUALIFYING FACILITY TARIFFS.

Docket No. E-01933A-02-0345

**TUCSON ELECTRIC POWER
COMPANY'S RESPONSE TO APS
ENERGY SERVICES COMPANY,
INC. PETITION TO INTERVENE,
ETC.**

Tucson Electric Power Company ("TEP"), through undersigned counsel, hereby responds to the "Petition of APS Energy Services Company, Inc.'s Petition to Intervene and Protest of Tariff Filing ("APSES Petition") as follows:

TEP does not object to APS Energy Services Company, Inc. ("APSES") participating as an intervenor in this docket. However, TEP does object to the APSES Petition to the extent that it (a) interjects inaccuracies into the record of this proceeding; and (b) proposes irresponsible solutions to the Commission's consideration of the TEP PRS Application filed in this docket.

I. APSES MISUNDERSTANDS THE TEP SETTLEMENT AGREEMENT – THERE IS NO BASIS TO REJECT THE TEP PRS APPLICATION.

APSES incorrectly asserts that the TEP PRS Application violates the TEP Settlement Agreement approved by the Commission in Decision No. 62103 ("TEP Settlement Agreement"). APSES' theory is that the PRS tariffs will increase rates in violation of Section 13.6 of the TEP Settlement Agreement. [See APSES Petition at 2, lines 26 through 36] APSES misunderstands the TEP Settlement Agreement. Missing from the APSES analysis of the TEP Settlement

1 Agreement is the plain language of Section 13.4, which states that only *unbundled and Standard*
2 *Offer* rates shall remain unchanged until at least December 31, 2008.¹ The TEP PRS Application
3 involves Qualifying Facility ("QF") rates and does not involve unbundled or Standard Offer rates.

4 Moreover, although APSES cited a portion of Section 13.6, in its argument, it failed to
5 acknowledge the most controlling relevant language in that section:

6 Nothing contained in this Settlement Agreement shall preclude TEP from
7 filing changes to its tariffs or terms and conditions of service which are not
8 inconsistent with its obligation under this Settlement Agreement."

9 Accordingly, when Section 13.6 is read (in its entirety) with Section 13.4, it is clear that
10 the terms of the TEP Settlement Agreement allow the TEP PRS Application. Consequently, there
11 is no factual or legal basis for the Commission to reject, summarily or otherwise, the TEP PRS
12 Application.

13 APSES also misstates that the TEP PRS Application will "eliminate" APSES' ability to
14 provide co-generation in TEP's service territory. There is no factual basis for APSES' contention.
15 TEP believes that APSES is proceeding with its plans to provide co-generation services in the TEP
16 service territory.

17 **II. THERE IS NO REASON TO CONSOLIDATE THE TEP PRS**
18 **APPLICATION WITH THE TEP MOTION FOR CLARIFICATION**
19 **OF SETTLEMENT PROCEEDING.**

20 TEP does not object to the 120-day suspension of this docket recommended by the
21 Commission Staff. However, it is not necessary or appropriate to consolidate this matter with the
22 TEP Motion For Clarification of Settlement Agreement ("TEP MGC Motion"). The substantive
23 issues involved in the TEP PRS Application and the TEP MGC Motion are distinct and separate.
24 The TEP MGC Motion was stipulated to by all of the signatories to the TEP Settlement
25 Agreement. Furthermore, the TEP MGC Motion has been made a part of the TRACK "B" issues
26 that the Commission is deciding in the generic docket proceeding. There simply is no factual,


27 ¹ In fact, this point is made two (2) times in Section 13.4.

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1 legal or common sense rationale for consolidating these two matters.

2
3 RESPECTFULLY SUBMITTED this 31st day of May, 2002.

4 **ROSHKA HEYMAN & DEWULF, PLC**

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12 **ORIGINAL** and **10 COPIES** of the foregoing
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17 **COPIES** of the foregoing hand-delivered
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